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E-Filed on 6/19/2009

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14 Attorneys for Secured Creditor WELLS FARGO BANK, NATIONAL ASSOCIATION, AS
 15 TRUSTEE FOR CERTIFICATEHOLDERS OF BEAR STEARNS ASSET
 16 BACKED SECURITIES I LLC, ASSET BACKED CERTIFICATES, SERIES
 17 2007-AC5

18 UNITED STATES BANKRUPTCY COURT

19 DISTRICT OF NEVADA

20 In re
 21 FLORENCIO AQUINO SINABAN AND
 22 AURELIA C. SINABAN,
 23 Debtor(s).

24 Bankruptcy Case No. BK-S-09-17147-lbr
 25 Chapter 7

26 WELLS FARGO BANK, NATIONAL
 27 ASSOCIATION, AS TRUSTEE FOR
 28 CERTIFICATEHOLDERS OF BEAR
 STEARNS ASSET BACKED SECURITIES
 I LLC, ASSET BACKED CERTIFICATES,
 SERIES 2007-AC5'S MOTION FOR
 RELIEF FROM AUTOMATIC STAY
 (11 U.S.C. § 362 and Bankruptcy Rule 4001)

29 Date: July 15, 2009
 30 Time: 10:00 A.M.

31 Wells Fargo Bank, National Association, as Trustee for Certificateholders of Bear Stearns
 32 Asset Backed Securities I LLC, Asset Backed Certificates, Series 2007-AC5 ("Movant"), moves this
 33 court for an order terminating the automatic stay of 11 United States Code § 362 as to Movant, so
 34 that Movant may commence and continue all acts necessary to enforce its security interest in real
 35 property generally described as 1168 Claire Rose Avenue, Las Vegas, Nevada 89183.

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1 On or about May 5, 2009, Florencio Aquino Sinaban and Aurelia C. Sinaban ("Debtors")
 2 filed a voluntary petition under Chapter 7 of the Bankruptcy Code, and Joseph B. Atkins was
 3 appointed as Chapter 7 Trustee. As a result of said filing, certain acts and proceedings against
 4 Debtors and the bankruptcy estate are stayed as provided in 11 United States Code § 362.

5 Movant moves this court for relief from stay under 11 United States Code §§ 362(d)(1) and
 6 362(d)(2).

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I.**

9 **MOVANT IS ENTITLED TO RELIEF FROM THE**
AUTOMATIC STAY UNDER 11 UNITED STATES CODE
§ 362(d)(2).

11 **NO EQUITY**

12 11 United States Code § 362(d)(2) provides that relief from the automatic stay shall be
 13 granted if the debtor does not have any equity in the property and the property is not necessary to the
 14 debtor's effective reorganization.

15 In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:
 16 § 362(d)(2) reflects congressional intent to allow creditors to
 17 immediately proceed against the property where the debtor has no
 18 equity and it is unnecessary to the reorganization, even where the
 19 debtor can provide adequate protection under § 362(d)(1). (Emphasis
 20 added).

21 *Id.* at 610 (emphasis added).

22 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated
 23 that in determining whether equity exists in the property for purposes of § 362(d)(2), all
 24 encumbrances are totalled, whether or not all the lienholders have joined in the request for relief
 25 from stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th
 26 Cir. 1984).

27 An appropriate cost of sale factor should also be added to determine if the debtor has any
 28 equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R. 283, 289
 (Bankr. S.D. Cal. 1982).

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1 On or about February 23, 2007, Debtors, for valuable consideration, made, executed and
2 delivered to Homeamerican Mortgage Corporation ("Lender") a Note in the principal sum of
3 \$217,592.00 (the "Note"). Pursuant to the Note, Debtors are obligated to make monthly principal
4 and interest payments commencing April 1, 2007, and continuing until March 1, 2037, when all
5 outstanding amounts are due and payable. The Note provides that, in the event of default, the holder
6 of the Note has the option of declaring all unpaid sums immediately due and payable. A true and
7 correct copy of the Note is attached hereto as exhibit B and incorporated herein by reference.

8 On or about February 23, 2007, the Debtors made, executed and delivered to Lender a Deed
9 of Trust (the "Deed of Trust") granting Lender a security interest in real property commonly
10 described as 1168 Claire Rose Avenue, Las Vegas, Nevada 89183 (the "Real Property"), which is
11 more fully described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs
12 incurred as a result of the Debtors' bankruptcy case may be included in the outstanding balance
13 under the Note. The Deed of Trust was recorded on, in the Official Records of Clark County, State
14 of Nevada. A true and correct copy of the Deed of Trust is attached hereto as exhibit C and
15 incorporated herein by reference.

16 Subsequently, Lender's beneficial interest in the Note and the Deed of Trust was sold,
17 assigned and transferred to Movant. A true and correct copy of the Corporation Assignment of Deed
18 of Trust evidencing the Assignment of the Note and Deed of Trust to Movant is attached hereto as
19 exhibit D and incorporated herein by reference.

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1 The obligation under the Note is in default as of December 1, 2008, for failure to make
2 payments to Movant. As of May 19, 2009, the total obligation due and owing under the Note is in
3 the approximate amount of \$226,998.29, representing the principal balance of \$217,566.67, interest
4 in the sum of \$8,216.52, late charges in the amount of \$186.96, escrow advances in the amount of
5 \$773.14, total fees in the amount of \$134.00, and recoverable balance in the amount of \$121.00.
6 This is an approximate amount for purposes of this Motion only, and should not be relied upon as
7 such to pay off the subject loan as interest and additional advances may come due subsequent to the
8 filing of the Motion. An exact payoff amount can be obtained by contacting Movant's counsel.
9 Further, Movant has incurred additional post-petition attorneys' fees and costs in bringing the instant
10 Motion. Moreover, the total arrears under the Note are in the approximate sum of \$9,651.27,
11 excluding the post-petition attorneys' fees and costs incurred in filing the instant Motion. Movant's
12 Information Sheet as to the extent of liens and encumbrances against the Real Property is attached
13 hereto as exhibit A and incorporated herein by reference.

II.

RELIEF FROM STAY

LACK OF EQUITY

17 Movant is informed and believes that, based on the Debtors' bankruptcy Schedules and
18 Statements, the fair market value of the Property is approximately \$271,661.00. True and correct
19 copies of the Debtors' bankruptcy Schedules "A" and "D" are collectively attached hereto as
20 exhibit E and incorporated herein by reference.

Based on the above, Movant maintains that the equity in the Property is as follows:

Fair Market Value:	\$271,661.00
Less:	
Movant's Trust Deed	\$226,998.29
Countrywide Home Lending's Trust Deed	\$54,095.00
Costs of Sale (8%)	<u>\$21,732.88</u>
Equity in the Property:	\$<31,165.17>

As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since this is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is entitled to relief from the automatic stay pursuant to 11 United States Code § 362(d)(2).

Debtors' Statement of Intent indicates it is the intent of the Debtors to surrender the Real
Property in full satisfaction of Movant's secured claim. A true and correct copy of the Debtors'
Statement of Intent is attached hereto as exhibit F and incorporated herein by reference.

III.

**MOVANT IS ENTITLED TO RELIEF FROM THE
AUTOMATIC STAY UNDER 11 UNITED STATES CODE
§ 362(d)(1).**

CAUSE - LACK OF ADEQUATE PROTECTION

Pursuant to the provisions of 11 United States Code §§ 361 and 362(d)(1), Movant is entitled to adequate protection of its interest in the Property.

10 Movant submits that adequate protection in this case requires normal and periodic cash
11 payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to
12 Movant, including all attorneys' fees and costs incurred in the filing of this motion.

13 Movant is informed and believes that Debtors are presently unwilling or unable to provide
14 adequate protection to the Movant and there is no probability that adequate protection can be
15 afforded to Movant within a reasonable time.

16 By reason of the foregoing, Movant is entitled to relief from stay under 11 United States
17 Code § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant.

18 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

19 1. Terminating the automatic stay of 11 United States Code § 362, as it applies to the
20 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of Trust;

21 ||| 2. That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

22 3. Granting Movant leave to foreclose on the Real Property and to enforce the security
23 interest under the Note and the Deed of Trust, including any action necessary to obtain possession of
24 the Property;

25 4. Permitting Movant to offer and provide Debtors with information re: a potential
26 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
27 Mitigation Agreement, and to enter into such agreement with Debtors;

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1 5. Alternatively, in the event this court declines to grant Movant the relief requested
2 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
3 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
4 and all other deeds of trust encumbering the Real Property, including Debtors' obligations to pay
5 when due (a) the monthly installments of principal and interest, as required under the Note;
6 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors in order to
7 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the
8 filing of this motion;

9 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion be
10 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law;

11 7. That the requirements of Local Rule 9021 be waived; and

12 8. For such other and further relief as the court deems just and proper.

14 Dated: June 19, 2009

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